

BEFORE THE  
DEPARTMENT OF CORPORATIONS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

DAVID CARR FRANK, dba  
BOROGROVE; and DAVID CARR  
FRANK, as an individual,

Respondents.

File 923-4714

OAH Case No. L2004020454

FINAL DECISION

The attached Proposed Decision After Remand of the Administrative Law Judge is hereby adopted by the Department of Corporations as its Final Decision in the above-entitled matter.

This Final Decision shall become effective on OCT 22 2004.

IT IS SO ORDERED OCT 22 2004.

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WILLIAM P. WOOD  
California Corporations Commissioner

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**PROPOSED DECISION AFTER REMAND**

This matter initially came before Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, in Los Angeles, California, on March 8, 2004. Michelle Lipton, Corporations Counsel, appeared on behalf of William P. Wood, Corporations Commissioner (Commissioner), Department of Corporations (Department). Respondents did not appear.

The Commissioner seeks to discipline the investment adviser certificate issued to David Carr Frank dba Borogrove (respondent Borogrove) and to bar respondent David Carr Frank (respondent Frank) from any position of employment, management, or control of any investment adviser.

The Administrative Law Judge issued a Proposed Decision on April 5, 2004. By Order dated July 14, 2004, received by the Office of Administrative Hearings on July 16, 2004, California Corporations Commissioner William P. Wood rejected the Proposed Decision and referred the matter to the Office of Administrative Hearings for the taking of additional evidence. The Order stated:

“The additional evidence shall include, but not be limited to, the following:

- (1) Any evidence to be submitted by either party related to the dates set forth in Factual Findings Nos. 4 and 9 of the Proposed Decision, and
- (2) Any evidence to be submitted by either party regarding notice of the March 8, 2004 hearing (Government Code Section 11425.10(a)(1)).”

On August 26, 2004, the matter again came before Samuel D. Reyes in Los Angeles, California, for a hearing on the Commissioner’s referral for additional evidence. Michelle Lipton, Corporations Counsel, appeared on behalf of the Commissioner. Respondents did not appear.

Oral and documentary evidence was received at the hearing regarding item number 1 in the Commissioner's July 14, 2004 Order. No evidence was presented regarding lack of knowledge by respondents about the March 8, 2004 hearing, as permitted by item number 2 of the Commissioner's Order. The matter was submitted for decision on August 26, 2004.

### FACTUAL FINDINGS

1. The Commissioner filed the Accusation and accompanying documents solely in his official capacity.
2. The Commissioner served the Accusation, the Notice of Hearing, the Amended Notice of Hearing, and all other required documents on respondents.
3. Respondents failed to appear despite having notice of the allegations in the Accusation and of the time and place of hearing.
4. Respondent Frank was a registered representative of Western International Securities (WIS) from November 21, 2001 to April 19, 2002. He was permitted to resign following customer complaints.
5. During the period of April 20, 2002 to the latter part of 2002, respondent Frank: transferred 109 accounts of WIS clients, including that of John L. Finn, to Charles Schwab (Schwab); advised the clients regarding the purchase or sale of securities; obtained limited power of attorney from clients to enable respondent Frank to use the clients' funds to purchase and sell securities on the clients' behalf; used clients' funds to trade securities on their behalf; and received compensation from clients for advising investment in securities and for performing trades in securities. In the latter part of 2002, Schwab suspended respondent Frank's privileges at the firm because of aggressive trading.
6. Respondent Frank created respondent Borogrove, a sole proprietorship owned by respondent Frank, in October 2002. It has offices at 1219 West 61<sup>st</sup> Street Terrace, Kansas City, Missouri.
7.
  - a. On January 21, 2003, respondent Frank filed an application for investment adviser registration to conduct business as Borogrove. He subsequently amended and completed the application on February 10, 2003.
  - b. Respondent Frank listed the following as the address of his principal office and place of business: One World Center, Suite 1850, Long Beach, California. This statement was false, as he had vacated the office in September 2002.

c. Respondent stated in the application that he had not provided investment advisory services to any client during the prior fiscal year, which statement is false in that he had in fact provided services to clients as set forth in factual finding number 5.

8. In reliance on the statements contained in the application, the Department issued Investment Adviser Certificate number 121130 to respondent Borogrove on February 11, 2003.

9. During the period of April 20, 2002 to February 11, 2003, respondents did not hold an investment adviser certificate or any other license or registration issued by the Commissioner or by the Securities and Exchange Commission, nor were they exempt from the licensure requirement.

10. The Department received a fraud complaint from Schwab and opened an investigation in April 2003. The Department discovered the falsity of the statements contained in respondent's application and filed the instant accusation.

### LEGAL CONCLUSIONS

1. Corporations Code section 25009 defines an investment adviser as "any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing or selling securities ...." Respondent Frank acted as an investment adviser, by reason of factual finding number 5.

2. Corporations Code section 25230 makes it unlawful for anyone to conduct business as an investment adviser without Commissioner authorization or a valid exemption. Respondent Frank willfully violated Corporations Code section 25230 in that he acted as an investment adviser during the period of April 20, 2002 to the latter part of 2002 without an investment adviser certificate or a valid exemption from the licensure requirement, by reason of factual finding numbers 4, 5, 6, 7, 8, and 9.

3. Corporations Code section 25232.1 provides, in pertinent part:

"The Commissioner may, after appropriate notice and opportunity for hearing, by order censure, or suspend for a period not exceeding 12 months, or bar from any position of employment, management or control of any investment adviser, broker-dealer or commodity adviser, any officer, director, partner, employee of, or person performing similar functions for, an investment adviser, or any other person, if he or she finds that the censure, suspension or bar is in the public interest and that the person has committed any act or omission enumerated in subdivision (a), (e), (f), or (g) of Section 25232 ...."

Corporations Code section 25232, subdivision (e), in turn, permits the Commissioner to censure, deny, suspend, or revoke a certificate for willful violation of any provision of Corporations Code section 25000 and others that follow.

Cause exists pursuant to Corporations Code sections 25230, 25232, and 25232.1 to bar respondent Frank from any position of employment, management or control of any investment adviser because he willfully acted as an investment adviser without authority to do so and without an exemption from the licensure requirement, by reason of factual finding numbers 4, 5, 6, 7, 8, and 9 and legal conclusion numbers 1 and 2.

4. In light of the nature and extent of the violations committed by respondent Frank, the public interest requires the bar of respondent Frank from serving as an employee, manager, or person with control of an investment adviser.


5. Corporations Code section 25232, subdivision (a), authorizes the Commissioner to revoke an investment adviser certificate if the adviser or anyone with authority to act for the adviser "has willfully made or caused to be made in any application for a certificate ... any statement which was at the time and in light of the circumstances under which it was made was false or misleading with respect to any material fact ...." Respondent Frank made false statements in the application for licensure, as set forth in factual finding number 7, which statements were willful and pertained to material facts. Cause therefore exists pursuant to section 25232, subdivision (a), to revoke the investment adviser certificate issued to respondent Borogrove.

#### ORDER

1. The Investment Adviser Certificate issued to respondent Frank dba Borogrove is revoked.

2. Responded Frank is barred from any position of employment, management or control of any investment adviser, broker-dealer or commodity adviser, any officer, director, partner, employee of, or person performing similar functions for, an investment adviser, or any other person.

DATED: 9/23/04

 **SAMUEL D. REYES**  
Administrative Law Judge  
Office of Administrative Hearings